IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

:: J U D G M E N T ::

(1)- D.B. CIVIL SPECIAL APPEAL (W) NO.208/2006
(State of Rajasthan & Ors. V/s Raniwas Porwal)

(2)- D.B. CIVIL SPECIAL APPEAL (W) NO.1070/2007
(State of Rajasthan & Ors. V/s Kanhaiya Lal Gaur)

(3)- D.B. CIVIL SPECIAL APPEAL (W) NO.459/2006
(State of Raj.& Ors. V/s Gunwant Lal Mehta)

(4)- D.B. CIVIL SPECIAL APPEAL (W) NO.784/2006
(State of Raj. & Ors. V/s Poonam Singh Solanki & Ors.)

(5)- D.B. CIVIL SPECIAL APPEAL (W) NO.824/2006
(State of Rajasthan & Ors. V/s Ghanshyam Lal & Ors.)

(6)- D.B. CIVIL SPECIAL APPEAL (W) NO.825/2006
(State of Rajasthan & Ors. V/s Om Prakash)

(7)- D.B. CIVIL SPECIAL APPEAL (W) NO.829/2006
(State of Rajasthan & Ors. V/s Udai Kishan Joshi & Ors.)

(8)- D.B. CIVIL SPECIAL APPEAL (W) NO.834/2006
(State of Rajasthan & Ors. V/s Ratan Lal Moathiya)

(9)- D.B. CIVIL SPECIAL APPEAL (W) NO.836/2006
(State of Rajasthan & Ors. V/s Tejraj Carpenter)

(10)- D.B. CIVIL SPECIAL APPEAL (W) NO.837/2006
(State of Rajasthan & Ors. V/s Shanti Devi)

(11)- D.B. CIVIL SPECIAL APPEAL (W) NO.852/2006
(State of Rajasthan & Ors. V/s Parshuram Patidar)

(12) -D.B. CIVIL SPECIAL APPEAL (W) NO.853/2006
(State of Rajasthan & Ors. V/s Ghanshyam Carpenter)

(13)- D.B. CIVIL SPECIAL APPEAL (W) NO.854/2006
(State of Rajasthan & Ors. V/s Allanoor Neelgar)

(14)- D.B. CIVIL SPECIAL APPEAL (W) NO.855/2006
(State of Rajasthan & Ors. V/s Radhey Shyam Toshniwal)

(15)- D.B. CIVIL SPECIAL APPEAL (W) NO.856/2006
(State of Rajasthan & Ors. V/s Kishan Rao Maratha.)

(16) -D.B. CIVIL SPECIAL APPEAL (W) NO.857/2006
(State of Rajasthan & Ors. V/s Man Singh Rathore)

(17)- D.B. CIVIL SPECIAL APPEAL (W) NO.858/2006
(State of Rajasthan & Ors. V/s Mansingh Rajput)

(18)- D.B. CIVIL SPECIAL APPEAL (W) NO.859/2006
(State of Rajasthan & Ors. V/s Shanti lal Nagori)

(19)- D.B. CIVIL SPECIAL APPEAL (W) NO.860/2006
(State of Rajasthan & Ors. V/s Mangi Lal Patidar)

(20)- D.B. CIVIL SPECIAL APPEAL (W) NO.861/2006
(State of Rajasthan & Ors. V/s Tulsi Ram Sharma)

(21)- D.B. CIVIL SPECIAL APPEAL (W) NO.862/2006
(State of Rajasthan & Ors. V/s Asha Ram Gancha)

(22)- D.B. CIVIL SPECIAL APPEAL (W) NO.863/2006
(State of Rajasthan & Ors. V/s Mansukh Lohar)

(23)- D.B. CIVIL SPECIAL APPEAL (W) NO.864/2006
(State of Rajasthan & Ors. V/s Babu Lal Sharma)

(24)- D.B. CIVIL SPECIAL APPEAL (W) NO.866/2006
(State of Rajasthan & Ors. V/s Om Prakash Sharma)

(25)- D.B. CIVIL SPECIAL APPEAL (W) NO.1071/2007
(State of Rajasthan & Ors. V/s Inder Singh)

(26)- D.B. CIVIL SPECIAL APPEAL (W) NO.1069/2007
(State of Rajasthan & Ors. V/s Abdul Salam Sheikh & Anr.)

(27)- D.B. CIVIL SPECIAL APPEAL (W) NO.62/2007
(State of Rajasthan & Ors. V/s Puranram Choudhary)

(28)- D.B. CIVIL SPECIAL APPEAL (W) NO.152/2007
(State of Rajasthan & Ors. V/s Smt. Seeta Agarwal & Ors.)

(29)- D.B. CIVIL SPECIAL APPEAL (W) NO.210/2007
(State of Rajasthan & Ors. V/s Champa Lal Khatri & Ors.)

(30)- D.B. CIVIL SPECIAL APPEAL (W) NO.312/2007
(State of Rajasthan & Ors. V/s Nanalal & Ors.)

(31)- D.B. CIVIL SPECIAL APPEAL (W) NO.427/2007
(State of Rajasthan & Ors. V/s Sadruddin Sheikh & Ors.)

(32)- D.B. CIVIL SPECIAL APPEAL (W) NO.479/2007
(State of Rajasthan & Ors. V/s Chand Mal Jain)

(33)- D.B. CIVIL SPECIAL APPEAL (W) NO.480/2007
(State of Rajasthan & Ors. V/s Labh Chand Jain)

(34)- D.B. CIVIL SPECIAL APPEAL (W) NO.504/2007
(State of Rajasthan & Ors. V/s Basanti Lal Jain)

(35)- D.B. CIVIL SPECIAL APPEAL (W) NO.532/2007
(State of Rajasthan & Ors. V/s Shanker Lal Gurjar)

(36)- D.B. CIVIL SPECIAL APPEAL (W) NO.533/2007
(State of Rajasthan & Ors. V/s Bheek Singh)

(37)- D.B. CIVIL SPECIAL APPEAL (W) NO.534/2007
(State of Rajasthan & Ors. V/s Magan Lal Gurjar)

(38)- D.B. CIVIL SPECIAL APPEAL (W) NO.549/2007
(State of Rajasthan & Ors. V/s Bhagwati Prasad Awasthi)

(39)- D.B. CIVIL SPECIAL APPEAL (W) NO.729/2007
(State of Rajasthan & Ors. V/s Arjun Singh Deora & Ors.)

(40)- D.B. CIVIL SPECIAL APPEAL (W) NO.810/2007
(State of Rajasthan & Ors. V/s Gopal Lal Vyas)

(41)- D.B. CIVIL SPECIAL APPEAL (W) NO.974/2007
(State of Rajasthan & Ors. V/s Nana Lak Sharma & Ors.)

(42)- D.B. CIVIL SPECIAL APPEAL (W) NO.983/2007
(State of Rajasthan & Ors. V/s Miss Carmleen Devid)

Date of Judgment :: 13.12.2007

PRESENT

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. N.M.Lodha, Additional Advocate General.
Mr. L.R. Upadhyaya, Deputy Govt. Advocate.

Mr. Ravi Bhansali)
Mr. Harish Purohit)
Mr. K.L. Khatri)
Mr. Kuldeep Mathur)
Mr. Rakesh Arora)
Dr. Sachin Acharya)
Mr. Sajjan Singh)
Mr. UCS Singhvi)
Mr. Mukesh Vyas)
Mr. C.S. Kotwani)
Mr. Ramesh Purohit) for the respondents.

BY THE COURT :

Heard learned counsel for the parties.

All these appeals raise common issues about fall out of amendment made in General Note 8 relating to the Education Department appended to Schedule-V of the Rajasthan Civil Services (Revised Pay Scales) Rules, 1998 by inserting sub-clause (ii)

and sub-clause (iii) in the Note vide Notification No.F.16(5) FD (Rules)/98 dated 8.6.2001. This amendment was to come in effect retrospectively w.e.f. 1.7.1998.

All the respondents-petitioners are Senior Teachers drawing pay in second selection grade of 6500-10500 and continue to draw pay in the scale as senior scale without considering the eligibility period of service for the senior scale prescribed under this order. This provision was also made applicable to the respective equivalent posts mentioned in the Schedule (i) issued by the Education department. Since all the incumbents were drawing pay in selection grade of 6500-10500, they were accordingly fixed therein on commencement of the revised pay-scale Rules, 1998 and continued in the pay-scale in which they were drawing pay at the time of commencement of the Rules.

By the amendment, while the original Note 8 was kept intact as 8(i), two paragraphs were added and after amendment, Note 8 as aforesaid reads as under :-

> "8. [(i) The Senior Teachers <u>drawing pay in the first selection</u> grade of 6500-10500 shall continue to draw pay in the scale as senior scale without considering the eligibility period of service for the senior scale prescribed under

> this order. This provision shall also be applicable to the respective equivalent posts mentioned above.
>
> (ii)- The teacher (earstwhile Teacher grade III) drawing pay in the second selection grade of 6500-10500 and promoted as Senior Teacher prior to 1.7.1989 shall draw pay in the scale of 6500-10500 as senior scale of Senior Teacher. Those Senior Teachers who have not completed nine years service as Senior Teacher on 1.7.1998, their pay on 1.7.1998 shall be fixed in the pay scale of 5500-9000 and such Senior Teachers shall be allowed pay in the senior scale of 6500-10500 on completion of ten years service as Senior Teacher.
>
> (iii)- As a result of re-fixation of pay in accordance with the provisions contained in clause (ii) above the recovery of overpayment, if any, shall stand waived for the period from 1.7.1998 to the date of issue of this Notification."

This resulted in Senior Teachers drawing their emoluments in the pay-scale of 6500-10500 at the commencement of the Rules into two classes; the persons, who were promoted as Senior Teachers prior to 1.7.1989 and drawing pay in the then first selection scale of 6500-10500 as Senior Teachers in the same pay-scale named as senior scale. However, those Senior Teachers, who have been promoted after 1.7.1989 and had not completed nine years of service as Senior Teacher on 1.7.1998, their pay w.e.f. 1.7.1998 was to be fixed in the lower pay-scale of 5500-9000 and such Senior Teachers falling in the

latter class were again allowed to draw their salary in the senior scale of 6500-10500 on completion of ten years of service as Senior Teacher.

Under sub-clause (iii) of the Note 8, the recovery of overpayment, if any, which became due as a result of fixation in whole pay-scale to waive for the period from 1.7.1998 to the date of issue of this Notification i.e. 8.6.2001.

This resultant fixation of the Senior Teachers promoted less than nine years before 1.7.1998 led to filing of several writ petitions challenging the fixation in lower pay-scale and as a result of this amendment and reduction in pay with retrospective effect, consequential recoveries were to be made therefrom. The validity of such amendment in the Rules was challenged inter alia on the ground that the incumbents had vested right to continue in the pay-scale in which they were already drawing their emoluments and that right could not have been curtailed by the amendment by reducing the pay-scale applicable to them and consequential reduction of the emoluments. Such amendment was canvased to be ultravires the authority of legislation being unconstitutional.

The plea found favour with the learned Single Judge while deciding the case of Chandra

Mohan Singh & 185 Ors. V/s State of Rajasthan & Ors. reported in 2004(3) WLC (Raj.) 413, and it was held that before amendment the incumbents Senior Teachers had acquired vested right to draw their pay in the formerly selection scale designed as senior scale under the Revised Pay-scale Rules, 1998 before the commencement of the Rules and they continued to draw emoluments under the Revised Pay-scale Rules of 1998. The said vested right could not have been taken away by amending the rules retrospectively. The learned Single Judge in Chandra Mohan's case decided the writ petitions in terms of following directions :-

> "As a result of the above discussion. I decided the instant writ petitions in the following terms:-
>
> (i)- Impugned notifications dated June 8,2001 and August 7,1998 to the extent they interfere with the accrued and vested right of the petitioners and similar situated employees in reducing the Pay scale of Rs.6500-10500 to Rs.5500-9000 w.e.f. July 1, 1998 are declared ultravires to the Constitution and only to that extent they stand quashed and set aside.
>
> (ii)- The petitioners unaffected by the impugned notifications shall be entitled to retain the pay scale of Rs.6500-10500 and consequential monetary benefits in view of 1998 Rules which were given effect from September 1,1996.
>
> (iii)- The respondents are restrained from making any recovery from the petitioners and if any recovery has already been affected,

> the entire recovered amount shall be refunded back within thirty days from the date of receipt of certified copy of this order.
>
> (iv)- There shall be no order as to costs."

After the aforesaid decision, a number of writ petitions came to be decided by the learned Single Judges by following the decision in the case of Chandra Mohan's and directions were issued in terms thereof.

All the above appeals arise out of such orders in like facts and circumstances and common issues involved is whether the amendment brought in revised rules result in taking away vested rights and whether the same are ultravires and invalid.

We have heard learned counsel for the parties and considered the rival contentions raised before us. It appears that the premise of the learned Single Judge that vested right cannot be taken away by the legislative method retrospectively or prospectively and the incumbents have right to continue in the same pay-scale notwithstanding the Rules having been framed contrary to it, is too broadly stated. It further appears to be well settled that any legislature which has power to provide pay-scale by law has also necessary competence to amend the law prospectively and

retrospectively. It has been stated and reiterated in catena of decisions of Supreme Court. It is also well settled that while legislature retrospectively can take away or impair any vested right of persons but that power of legislation is subject to like any other law that in making such legislation it cannot contravene fundamental rights or any provisions of the Constitution.

However, this also appears to be fairly well settled that where such an amendment has been brought about resulting in modification of the pay-scale by placing a person drawing pay in higher pay-scale to lower pay-scale thereby his actual pay is not reduced and if as a result of fixation in lower pay-scale at appropriate stage, the pay is reduced, incumbent is entitled to protection of difference in his pay by appropriate devise.

In this connection, we may notice the decision of the Supreme Court in State of Gujarat and Anr. V/s Raman Lal Keshav Lal Soni, reported in (1983) 2 SCC 33. It was a case in which the benefits of the recommendations of the two Pay Commissions, the 'Sarela' and the 'Desai' Commissions, have been extended to the employees working under the various Panchayat Institutions of Gujarat State, but the same benefit was not extended to a microscopic number of employees about 6000 in number solely on

the ground of their birth-mark that is to say that before they come to work under the Panchayat Institutions, they were employed in municipalities while the others were government servants to start with. In other words, on formation of Panchayats the persons, who came with the Panchayat or later on came on deputation and working in the Panchayat, benefit was extended only to those who came from the Government service but not to those who came from municipality service. Considering this to be a case of hostile discrimination and the classification based on no rational basis having nexus with objects sought to be achieved, the Court observed :-

> "The legislature can legislate retrospectively to take away or impair any vested right acquired under existing laws but thereby it cannot contravene fundamental rights."

Primarily relying on this judgment the learned Single Judge has allowed the writ petition. However, with utmost respect, we may notice that the distinction between impairment of vested right and infringement of fundamental rights noticed in Ram Lal Keshav Lal Soni's case has not been noticed in Chandra Mohan's case. Unless a case is made out of the breach of fundamental right or any other provision of the Constitution, merely because by legislative acts vested right under the

existing laws are taken away or impaired, the law does not become bad for that reason alone. It needs further probe, whether in doing so any constitutional limits have been transgressed.

In somewhat same light reference has been made to another decision of the Supreme Court in Union of India and Ors. V/s Anil Kumar and Ors., reported in (1999) 5 SCC 743 it was a case where as a result of restructuring of pay-scale, the total number of pay-scales were reduced omitting a particular scale and clubbing the employees in that scale with the employees in the lower pay scale. As a result of which the Assistant Foremen, who were drawing their pay in the pay-scale of Rs.2000-3200 before amendment, as a result of restructure of pay-scale, pay-scale is put in Rs.2375-3500. The case is of similar thing which is one before us. Simultaneously, by another rule, all Assistant Foremen en bloc were declared junior to Chief Draftsmen (CDMs) and Senior Scientific Assistant (SSAs), who had been placed in the higher pay-scale of Rs.2000-3200 under the new pay-scale was also challenged.

The Tribunal while upholding the restructuring of pay-scales and placement of Assistant Foremen in the lower pay-scale, than the one in which they were drawing their pay before

amendment, due to restructuring of the pay-scales held it to be valid by taking note of the fact that they are likely to get equivalent replacement of scales as a result of recommendation made by the department. Rule 6(3)(b) of the Rules of 1995 altering the status of Assistant Foremen, employees vis-a-vis CDM and SSA from the date of appointment was held to be ultravires on the ground that the action of putting the Assistant Foremen en bloc junior to Chief Draftsmen (CDMs) and Senior Scientific Assistant (SSAs) was without any rationale or valid basis was held to be arbitrary and violative of the fundamental rights guaranteed in service matters.

The Court opined that security of tenure and service condition of employees is of paramount consideration to achieve the goals for having an effective and vibrant civil service in the society. No Government can resort to actions depriving the benefits to a section of service en bloc which admittedly is to their disadvantage. Such en bloc deprivation of the promotional avenues and service benefits cannot be sustained when no cogent reasons are assigned by the administrative set-up. Resort to differential treatment in the service can be had only for achieving the efficiency in the service or any other specified objective declared to be attained. No discrimination can be permitted only

at the whims of the administration or to satisfy another section of the civil service.

It is in this yardstick when the Supreme Court while reviewing the decision of the Tribunal it upheld the fixation of some of the members of the service in lower pay-scale which was as a result of rational restructuring of the pay-scale by reducing the number of pay-scales. Obviously persons falling in the category drawing a particular pay-scale before revised newly structured pay-scale, had to be fixed in one or other pay-scales newly devised, and lessor in number resulted in fixation of some employees in lower pay-scale under the new rules the reduction of number of pay-scales being an act of rationalising pay structure by eliminating plethora of pay-scales was held to be an object worth achieving. Consequently, fixation in newly structured pay-scale was held to be intravires. It was not a case of merely revising all existing pay-scales but was to restructure and rationalise the pay-scales. But under the same rules the seniority of a class who were en bloc sought to be affected and which was found to be not having rational nexus to object sought to be achieved, but only to satisfy the claims of other class of the employees was held to be discriminatory and violative of Article 14 and the same was struck down.

Again the decision of the Supreme Court in Dharam Chand and Ors. Vs. Haryana Agricultural University and Ors., reported in (2004) 9 SCC 74, the Court considered and enquired into the question whether continuance of pre-existing pay-scale in the case of pre-existing employees but revising downwards the pay-scale w.e.f. a particular date in order to bring the same at par with the pay scale of their counterparts in government service and this parity resulted in reduction of pay-scale of employees was put to challenge on the ground of discrimination inter alia that the members of same cadre namely clerks had been classified in two categories on the basis of date of appointment and consequent review of pay-scale as violating Article 14.

The contention was repelled by the Supreme Court stating that the University did not make any discrimination as those who were appointed prior to 6.6.1980 formed a different class and thus they were entitled to different treatment. The scale of pay which was in vogue immediately prior to 6.6.1980 was given to them merely with a view to protect their pay. Such an order directing protection of scale of pay of employees, which is personal in nature, will not confer any legal right upon the appellants herein to claim the same remuneration in terms of

the principle of equal pay for equal work or otherwise. In coming to this conclusion the Supreme Court accepted the rationale furnished by the University in continued higher pay-scale of existing employees, after the regular pay-scale was revised for class of people to bring parity of scale in the University with their counter part in the government service, who were already in the University service on the date pay-scales were made applicable. The University placed the existing employees in higher scale in which they were drawing their emoluments as a personal measure to protect their pay while applying the revised pay-scale to new entrants. This protection of pay-scale of the existing employees was found to be not discriminatory consequentially continuance in the existing pay-scale despite measure of restructure in the pay-scale in the University to bring them at par with the pay-scale in the government service, was found to be not in breach of any constitutional provision and was upheld.

It would be apposite here to refer the ambit and scope of power of making rules by the President or Governor as the case may be under proviso to Article 309 as explained by a Constitution Bench of the Supreme Court in B.S. Vadera Vs. UOI and Ors., reported in AIR 1969 SC 118:

> "It has significant to note that proviso to Article 309, clearly lays down "any rules so made shall have effect, subject to provisions of any such Act". The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning unless hedged-in, by any limitations. The rules, which have to be 'subject to the provisions of the Constitution', shall have effect, 'subject to the provisions of any such Act'. That is, if the appropriate Legislature has passed an Act, under Article 309, the rules, framed under the Proviso, will have effect, subject to that Act; but in the absence of any Act, of the appropriate Legislature, on the matter, in our opinion, the rules, made by the President, or by such person as he may direct, are to have full effect, both prospectively and retrospectively. Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority."

In coming to this conclusion, Their Lordships explained the distinction between the earlier decision of the Supreme Court in State of Mysore Vs. Padmanabhacharya, reported in AIR 1966 SC 602. The view express in Vadera's case has been consistently reiterated and applied by the courts in all the cases which we have referred to above and the cases to which learned Single Judge has referred to in Chandra Mohan's case.

We are of the opinion therefore, that the real question that has to be examined while considering the challenge to any rule made retrospectively whether it infringes any provisions of the Constitution. We have already noticed in the above decisions that there is leaning in favour of protecting the existing pay to save alteration in the pay-scale by subsequent framing of the Rules under Article 309, either by continuing of the original pay-scale in respect of the existing employees so their pay is not reduced or by devising the protection of existing pay by providing for difference in refixed pay and existing pay as personal pay until that stage in the revised pay-scale, which is lower than the one existing, is reached as a result of new fixation.

We shall therefore, first examine the scheme of Revised Pay-scale Rules, 1998 to find out the object behind the impugned provision and its effect generally.

The scales of pay vis-a-vis posts have been envisaged under Rule 6 of the Rules of 1998. Significantly under the Note appended to that Rule 6, it has been made clear that in cases where the revised pay-scale has been lowered down in comparison to corresponding revised pay-scale of existing pay-scale indicated in Section `A' of

Schedule-I, the existing employee will continue to draw pay in the corresponding revised pay scale indicated in Section 'A' of the above schedule as personal to him so long as he holds the post, however, fresh appointment and promotion will be made in the revised pay-scale prescribed for the post in Section 'B' of Schedule-I.

The Note appended to Rule 6 protects the continuance of existing employees in existing pay-scale provided under revised pay-scale Rules of 1998 corresponding pay-scale of the existing post has been revised down wards. This provision is akin to the one which was before the Supreme court for consideration in Dharam Chand's case [(2004)9 SCC 74] which provides a parallel provision.

With this background in mind, if we look at the provisions relating the revised pay-scale in Education Department, with which we are concerned, in Schedule-V the pay-scales of Senior Teacher have been provided in item 2 under the Rajasthan Education Service (General Bench). According to this provision, the entry scale for Senior Teachers effective from 1.9.1996 was Rs.5000-8000 which has been revised upto Rs.5500-9000 and the senior scale which become operative under the Rules of 1998 after completion of service of ten years as Rs.6500-10500.

The general Notes appended under Schedule-V provides under Note 4 that in case of Teacher, Librarian Gr.III and Physical Training Instructor Gr.III drawing pay in the First selection grade of 5000-8000 shall continue to draw pay in this scale as Senior Scale without considering the eligibility period of service for the senior scale prescribed under this order. This provision shall also be applicable to the respective equivalent posts mentioned under Schedule-V.

The Note 5 also is relevant for the purpose of the second selection grade of 6500-10500. It provides that the Teachers and holders of equivalent posts as indicated above who are drawing pay in the second selection grade of 6500-10500 and Librarians Gr.III who are drawing pay in the third selection grade of 6500-10500, their pay shall be fixed in the selection scale of 5500-9000 on 1.7.1998 with reference to pay which they were drawing on 1.7.1998 at an equal stage and if there is no equal stage then at the next below stage plus difference as personal pay to be absorbed in future increase in pay. It may be noticed under the scheme that the persons falling in Note 4 mainly Teachers, Librarian Gr.III and Physical Training Instructor Gr.III drawing pay in the First selection grade of 5000-8000 were allowed to continue to draw pay in

the same scale as senior scale without considering the eligibility period of service for the senior scale respectively. We find that the entry scale for this class of officers has been revised and converted to 4500-7000 but existing employees drawing pay in the higher pay-scale have been allowed to draw pay in the existing pay-scale because their exist the same corresponding pay-scale for the cadre and senior scale which becomes due after completion of 10 years of service has been provided Rs.5000-8000 and after completion of further 10 years they become entitled to selection scale of Rs.5500-9000. The persons who were drawing higher pay-scale have been allowed to continue in the higher pay-scale of Rs.5000-8000 under revised pay-scale rules providing protection under the rules, notwithstanding the eligibility period for the senior scale.

Likewise, the Teachers and holders already drawing their pay in the second selection of 6500-10500 and Librarians Gr.III drawing their pay in the third selection grade of 6500-10500, but under the new rules fell in the category of teachers whose revised pay-scale has been lowered. The maximum pay-scale that is selection scale eligible under this category of officers was 5500-9000 only. It is for that reason the persons falling in that category were ordinarily to be fixed in the selection scale

of Rs.5500-9000, maximum permissible scale under the revised rule, hence, instead of allowing them to continue in higher pay-scale, the pay was protected. They were not allowed to continue in the existing pay-scale because the said pay-scale was not available to that class of persons under the Rules.

Note 5 is not applicable to the Senior Teachers.

Under Note 8, the pay-scales of Senior Teachers were dealt with. The Senior Teachers were classified into two categories. The Senior Teachers drawing pay in the first selection grade of 6500-10500 on the one hand and the teachers who were drawing pay second selection grade of Rs.6500-10500.

While no change was effected in the pay of the Senior Teachers drawing pay in the first selection grade, no provision was made for Senior Teachers (promoted from Primary Teacher Grade III) drawing pay in Second Selection Grade of Rs.6500-10500. This lacuna was cured when the provision was made for the first time by inserting the amendment w.e.f. 8.6.2001 inasmuch as prior to amendment, no provision has been made for teachers drawing pay in the second selection grade of 6500-10500 and had

been promoted to the Senior Teachers in the same pay-scale. It is for that reason, this amendment become necessary because Senior Teachers drawing pay in Second Selection Scale neither fell in Note No.4 and 5 or Item No.8. Now they are covered by Note No.8.

We have already noticed above the Senior Teachers ordinarily under the Rule were to be fixed in the pay-scale of Rs.5500-9000 on entry, but on completion of 10 years of service they were to be provided the senior scale of Rs.6500-10500. In order to give effect to this provision, sub-clause (ii) was inserted in Note 8 by keeping intact the emoluments of Senior Teachers who were drawing pay in second selection grade of 6500-10500 as Teacher Gr.III and had been so promoted prior to 1.7.1989 and were continued as such, as they having become entitled to benefit of grant of selection scale at periodical interval under the new rules also.

Those who had not completed that period of 10 years since promotion as Senior Teachers had not become entitled under the Revised Rules of 1998 to selection scale, hence, were ordinarily to be fixed in the lower pay-scale w.e.f. 1.7.1998. Those who have been promoted after 1.7.1989 obviously they have not completed 10 years period on 1.7.1998 and had not become entitled to selection grade under the

rules making it clear that on completion of 10 years of service they will also be allowed to senior scale of Rs.6500-10500.

Thus, sub-clause (ii) was squarely in consonance with the pay-scale prescribed under item No.2 for the Rajasthan Educational Subordinate Service (General Branch) cadre. In the process, the persons who had been appointed after 1.7.1989 fell for revision of pay-scale on lower side as a result of refixation without anything more, if any recovery was to be effected that was protected by way of sub-clause (iii) of Note 8 till the date of notification.

However, this provision did not have overriding effect on other part of the rules. If Note 8(ii) is read with Note appended to Rule 6 the harmonious construction of two will go to show that those teachers drawing pay in the second selection grade of 6500-10500 but were required to be put in lower pay-scale of Rs.5500-9000. But those who were already drawing pay of Rs.6500-10500 at the commencement of the Rules, their emoluments in the pay-scale of Rs.6500-10500 which is an existing pay-scale under the Revised Rules of 1998 was protected by virtue of Note to Rule 6. This harmonious construction is in consonance with the entire scheme of the Rules and notes appended thereto protecting

in each case the existing pay-scale or pay subject to availability of pay-scale under New Rules. This is clear from the Scheme of Note No.4, 5 and 8 read together. Since the persons falling in Note 5 did not have corresponding pay-scale applicable to them, a special provision was made for protecting their pay as a personal pay.

In all other cases, Note appended to Rule 6 took care of this protection.

We have already noticed above that in Dharam Chand's case the Supreme Court has approved such classifications as reasonable classification having nexus to the object sought to be achieved viz to provide normal protection of existing pay of existing employees and the lower pay-scale would be applicable to new entries after commencement of the rules.

Viewed from this point, rules cannot be held to be ultravires as they do not infringe any Constitutional provision nor they affect adversely the existing or vested or accrued rights of the existing employees. There is no vested right in the new entrants to old pay-scale for the post to which they enter after commencement of Rules nor any complaint can be raised by them.

Therefore, we are of the opinion that the declaration of the amendment of Note 8 vide Notification dated 8.6.2001 to be ultravires was not required to be made and judgment under appeal to that extent is not sustainable and deserves to be set-aside.

However, it may be clarified that because of the provisions made in Note 8 read with Note appended to Rule 6 a Senior Teacher drawing pay in second selection grade of 6500-10500 prior to 1.7.1998 and promoted as Senior Teacher but after 1.7.1989 who has not completed 10 years as Senior Teacher at the time of commencement of the Act his pay in pay-scale of 6500-10500 was protected as personal to him, though he would become eligible to such scale under the new rules of 1998 only on completion of 10 years. In this view of the matter, the rights of the respondents even under the aforesaid provision remain intact and unaffected and it could not have any adverse effect on them.

But those who have been promoted as Senior Teachers drawing their pay in Second Selection Grade of 6500-10500 will not be eligible for this pay protection because even under the Rules of 1998 as initially exist, they were to be promoted to Senior Scale, which was Rs.5500-9000 only. But because of lacuna in the Rules originally enacted, not

providing any specific provision, their fixation has been wrongly made by considering all Senior Teachers to be of the same category. The initial fixation in higher pay-scale being without any mistake on their part, until Notification of amendment, the resultant recoveries of excess amount paid to them has been waived.

But after correction of this lacuna on amendment of Note 8, no such protection has been granted under the Rules. If any such recovery has become due on account of continued drawing of pay by such Senior Teachers promoted after 1.7.1998, due to no mistake or misrepresentation on the part of such incumbents, they may make appropriate representation to the Government to consider their cases against recovery.

Accordingly, with the aforesaid clarification the appeals are allowed. The judgment under appeal declaring Notification dated 8.7.2001 to be ultravires is set-aside. However, the view which we have taken on interpretation of the Rules, the existing teachers who have been promoted as Senior Teacher in the Second Selection Grade prior to commencement of the Rules at any time but because of non-completion of 10 years of service as Senior Teacher under the revised rules were required to be fixed in lower pay-scale, their continuance in the

higher pay-scale was protected as pay-scale personal to them under Note to Rule 6. The rights of all the appellants stand protected to this extent. In that light, the writ petitions filed by the appellants stand allowed to that extent.

In the facts and circumstances of the case, there shall be no order as to costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/